

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING
Rules I through V, and amendment of)	ON PROPOSED ADOPTION
ARM 37.5.125 pertaining to Older Blind)	AND AMENDMENT
Program)	

TO: All Interested Persons

1. On September 13, 2006, at 11:00 a.m., a public hearing will be held in Room 207 of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption and amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on September 5, 2006, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; e-mail dphhslegal@mt.gov.

2. The rules as proposed to be adopted provide as follows:

RULE I OLDER BLIND PROGRAM: DEFINITIONS Definitions for purposes of this subchapter:

- (1) "Advisory council" means the Montana Vocational Rehabilitation Council.
- (2) "Community awareness" means conducting activities to help improve public understanding and knowledge of the aspects of blindness and low vision and the problems facing older blind persons.
- (3) "Consumer" means a person who the program has determined is eligible for and may receive older blind services.
- (4) "Division" means the Disability Services Division of the department.
- (5) "Functional areas" mean types of performance and assistance necessary for a person to successfully function independently in daily life and includes mobility, access to print information, self-care, independent living skills, access to technology, recreation, and social activities.
- (6) "Impediment" means, for a person, an obstacle or inability to perform a task or achieve a goal that is caused by a disabling condition.
- (7) "Independent living plan" means the plan prepared by the department in conjunction with the consumer. This plan specifies the independent living goals of the consumer, and the older blind services the department may provide to the consumer in order to assist the consumer to attain an improved quality of life.
- (8) "Independent living skills training" means training in compensatory skills,

including use of adaptive equipment that allows an individual with visual impairments to cope with vision loss, perform daily living activities, and participate more independently in the community.

(9) "Individual advocacy training" means helping a consumer to identify their independent living needs, to develop a plan of action to meet those needs, to obtain and use resource information, and to develop problem-solving skills necessary for ensuring an independent and self-determined lifestyle.

(10) "Information and referral" means providing a consumer with basic information on equipment, financial assistance, recreation, housing, and attendant care, support groups, legal rights, and other disability and community topics and resources.

(11) "Legally blind" means a visual disability in which:

(a) a person's central visual acuity does not exceed 20/200 in the better eye with correcting lenses; or

(b) a person's visual field at the widest diameter subtends an angle no greater than 20 degrees.

(12) "Low vision" means a significant visual impairment that even with correction makes performance of daily tasks difficult.

(13) "Maintenance" means payments made to fund food, shelter, or clothing for a consumer.

(14) "Mobility training" means sequential instruction to a consumer in the use of remaining senses to determine position within the environment and techniques for safe movement from one place to another.

(15) "Older blind person" means a person age 55 or older whose blindness or low vision makes competitive employment extremely difficult to attain or who does not want to pursue employment but for whom independent living goals are feasible.

(16) "Orientation and mobility specialist" means a qualified professional in orientation and mobility either employed or contracted by the department who provides training to consumers so they can navigate safely in their home and community environments and access public transportation.

(17) "Peer counseling" means counseling and support provided to a consumer who is experiencing personal issues related to vision loss by another person or group who has had similar experiences. The peer helper functions as a role model, advocate, and resource person for the consumer.

(18) "Program" means the Blind and Low Vision Services Program administered by the division.

(19) "Qualified blind and low vision staff" or "qualified staff" means a rehabilitation teacher, vision rehabilitation therapist, orientation and mobility specialist, or the rehabilitation counselor employed by the program.

(20) "Rehabilitation counselor" means a vocational rehabilitation counselor who meets the standards of qualified professional as identified by the Montana Vocational Rehabilitation program and is employed by the program.

(21) "Rehabilitation teacher" or "vision rehabilitation therapist" means a qualified professional in rehabilitation teaching for blind and low vision persons either employed or contracted by the program who instructs consumers in functional areas of independent living.

(22) "Rehabilitation teaching services" or "vision rehabilitation therapy

services” mean the assessment of a consumer's need for and training in compensatory skills for functional areas to assist the consumer in coping with vision loss.

(23) "Significant visual impairment" means a vision loss of acuity or field that even with correction limits a person's activities or ability to function in a normal manner.

(24) "Supportive services" mean services provided by family members or other persons, organizations, or institutions to assist the consumer in functional areas.

AUTH: 53-2-201, 53-7-102, 53-7-302, 53-7-315, MCA

IMP: 53-7-301, 53-7-302, 53-7-303, 53-7-306, MCA

RULE II OLDER BLIND PROGRAM: ELIGIBILITY (1) A person may receive older blind services if the person:

- (a) has appropriately applied for services;
- (b) is 55 years or older in age;
- (c) is legally blind, has low vision, or a significant visual impairment;
- (d) requires services available through the program that will contribute to the person's maintenance or increased independence; and
- (e) meets the other requirements of this subchapter applicable to consumers.

(2) The presence of a visual impairment or impediment may be determined by qualified staff based upon a functional assessment of the person's vision.

(3) A consumer's eligibility for services terminates when:

(a) a qualified staff member determines that the goals of the consumer's independent living plan have been achieved or cannot be achieved;

(b) due to fiscal or personnel resource exigencies the consumer's service delivery category is closed or the consumer is among the consumers whose service delivery is closed due to a reduction in the number of persons who can be served in the consumer's service delivery category;

(c) the consumer requests termination; or

(d) the consumer is no longer available for services.

(4) Prior to termination of a consumer's eligibility, the program will provide the consumer with notice of the termination and provide the consumer with the opportunity to seek an informal review of the proposed termination. If the person remains dissatisfied with the proposed termination, the person may request a fair hearing as provided for in [RULE V].

AUTH: 53-2-201, 53-7-102, 53-7-302, 53-7-315, MCA

IMP: 53-7-301, 53-7-302, 53-7-303, 53-7-306, MCA

RULE III OLDER BLIND PROGRAM: REDUCTION OF SERVICE POPULATION (1) The division, in accordance with state and federal law,

administers the program to assure the fiscal integrity of the program. If the division determines that there are insufficient fiscal or personnel resources to appropriately serve consumers, the administrator of the division in consultation with the Montana Vocational Rehabilitation Council will limit service delivery based upon the criteria in

(2) through (5).

(2) For the purposes of limiting service delivery in order to meet fiscal and personnel resources exigencies, the following categories are applicable:

(a) Category 1, for consumers already accepted into the Older Blind Program.

(b) Category 2, for consumers who are legally blind and at risk of moving into a less independent environment due to vision loss.

(c) Category 3, consumers with low vision (best acuity with correction of 20/80 or less in the better eye) or significant visual impairment that affects four or more areas of functioning, and consumers who are legally blind but not at risk of moving into a less independent environment.

(d) Category 4, for all other consumers with a significant visual impairment who meet the eligibility criteria for the Older Blind Program.

(3) For purposes of implementing service delivery limitations due to insufficient fiscal or personnel resources, the division will close, as appropriate to meet the fiscal and personnel resources exigencies, one or more categories of service delivery beginning with level 4. For each service delivery category closed, the division will initially close that category to further consumers. Consumers in that category already in receipt of services will continue to receive services unless it is necessary due to the exigencies to initiate closure of services to all persons in that category.

(4) If the division determines that there are fiscal or personnel resources available to serve some, but not all, of the consumers in a particular service delivery category, the division will continue to serve that number of consumers in that category for which it has adequate fiscal or personnel resources. Consumers to be served will be selected based upon the consumers' dates of application for the program beginning with the earliest date of application.

(5) If the division determines that there are fiscal or personnel resources available by which to begin to open a previously closed service delivery category but not serve all possibly eligible persons in that category, the division will serve that number of consumers for which it has adequate fiscal or personnel resources based upon the consumers' dates of application for the program beginning with the earliest date.

AUTH: 53-2-201, 53-7-102, 53-7-302, 53-7-315, MCA

IMP: 53-7-301, 53-7-302, 53-7-303, 53-7-306, MCA

RULE IV OLDER BLIND PROGRAM: SCOPE OF SERVICES (1) Older blind services are services determined necessary by qualified staff to assist a consumer with maintaining or increasing independence consistent with a consumer's priorities, concerns, abilities, interests, and choice.

(2) Older blind services include:

(a) outreach;

(b) low vision assessment, instruction, and assessment equipment;

(c) low vision aids and equipment;

(d) services and equipment fostering mobility and self-sufficiency;

(e) mobility training, Braille instruction, and other services and equipment to help an older individual who is blind adjust to blindness;

- (f) independent living skills training;
- (g) information and referral services;
- (h) peer counseling;
- (i) individual advocacy training;
- (j) supportive services;
- (k) rehabilitation teaching services;
- (l) training necessary for living in the community and participating in community activities; and
- (m) any other appropriate service designed to assist with daily living activities.

(3) Services may be made available in the discretion of the program to enhance independence, productivity, and quality of life, and independence of consumers as a group. Those services include, but are not limited to:

- (a) community awareness programs to enhance understanding and integration into society; and
 - (b) activities to help improve public understanding of problems of consumers.
- (4) Services provided to an individual consumer must be provided in accordance with the independent living plan.

AUTH: 53-2-201, 53-7-102, 53-7-302, 53-7-315, MCA

IMP: 53-7-301, 53-7-302, 53-7-303, 53-7-306, MCA

RULE V CONSUMER GRIEVANCES AND FAIR HEARINGS (1) A provider of older blind services must make available an informal procedure for resolution of any grievance that a consumer may have. Any matter of grievance not adequately resolved between a provider of services and a consumer may be brought before the department for review and resolution.

(2) An applicant for or consumer of older blind services provided through this subchapter who is the subject of an alleged adverse action of the program may pursue a fair hearing as permitted by and in accordance with this rule and ARM 37.30.1401.

AUTH: 53-2-201, 53-7-102, 53-7-302, 53-7-315, MCA

IMP: 53-7-301, 53-7-302, 53-7-303, 53-7-306, MCA

3. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.5.125 VOCATIONAL REHABILITATION AND BLIND AND LOW VISION SERVICES PROGRAMS: APPLICABLE HEARING PROCEDURES (1) Hearings relating to the provision of Vocational Rehabilitation Services inclusive of the Blind and Low Vision Services Program are available to the extent granted and as provided in ARM 37.30.1401 and in [RULE V]. The provisions of ARM 37.5.307, 37.5.310, 37.5.311, 37.5.316, 37.5.328, and 37.5.331 do not apply to such hearings.

AUTH: 53-2-201, 53-6-113, 53-7-102, 53-7-206, 53-7-315, MCA

IMP: 53-7-102, 53-7-106, 53-7-206, 53-7-314, 53-7-315, 53-19-112, MCA

4. The proposed new rules along with the proposed amendment of the existing rule will serve to implement in rule the Montana Older Blind Program. The Older Blind Program is a federally authorized and in part funded program administered by the state that provides a variety of independent living services to eligible consumers. The program is an aspect of the federal program of Independent Living Services for Persons with Disabilities authorized by the Rehabilitation Act of 1973, as amended.

The purpose of the Older Blind Program is to facilitate independent living for older persons who are blind or who have significant vision limitations known as low vision. The services available through the program support persons with vision handicaps to maintain healthy engaged life styles and avoid unnecessary dependence and isolation.

The Independent Living Services Program is currently implemented in rule at ARM Title 37, chapter 31. The existing rules are not appropriate for the implementation of the services provided through the Older Blind Program which in purpose, definitions, eligibility, and services differs significantly from the substantive aspects of the general Independent Living Program. The proposed new rules along with the proposed amendment to the existing independent living services rule will assure comprehensive rule implementation of the program.

The rule implementation of the Older Blind Program is necessary to assure that eligible persons are appropriately identified and engaged in service delivery. With the application of definitive criteria through the proposed rules, the fiscal and programmatic resources available for the delivery of services can be more effectively targeted to consumers who are blind or have vision impairments and more efficiently delivered given the particular needs of those consumers. Absent this rule adoption the appropriate development of the Older Blind Services Program would not be realized and some older blind consumers would lack appropriate services.

Rule I OLDER BLIND PROGRAM: DEFINITIONS

The definitions are necessary for the establishment and administration of the Older Blind Program. The definitions presented in the proposed rule encompass common nomenclature applied in the administration of the Older Blind Program. Acceptance for purpose of establishment and funding by the approving federal authorities of the Montana program is predicated upon the adoption of federally condoned eligibility criteria and of an appropriate array of services to meet the needs of the consumers that are to be delivered by an appropriate set of professionals. These definitions further effectuate those aspects of the program.

The terms "legally blind", "low vision", "significant visual impairment", "impediment", "functional areas", and "older blind person" provide the definitional parameters of eligibility for the services of the program. The definition of "older blind person" serves to establish an age parameter of 55 years of age or older and to provide that

there must be the presence of blindness or low vision that results in the need for service supports so that the person may realize independent living. These definitional parameters of eligibility are necessary to effectuate eligibility and to do so in the context of the governing federal authority at 29 USC 796j and 796k.

The types of services available through the program for individual consumers are encompassed in the definitions of "individual living advocacy", "information and referral", "maintenance", "mobility training", "peer counseling", "rehabilitation teaching services", and "supportive services". These program funded services are necessary to assure that an array of services may be drawn upon to adequately foster the independence of the program consumers. These services have been selected as the implemented set of services based upon their proven effectiveness in supporting the independent living of older blind persons. The "individual living advocacy" service and the "information and referral services" serve to inform and involve the consumer in the development of independent living services that are appropriate and necessary to meet the needs of the person. The other services available are those services that may be necessary to meet the functional and other needs of the person.

The professionals that may engage in the planning for and the delivery of services as identified in the rules are defined through the terms: "orientation and mobility specialist", "qualified blind and low vision staff", "rehabilitation counselor", and "rehabilitation teacher". These definitions, reflecting accepted professional categories for the delivery of services to blind and low vision persons, are important to assure that the service development and delivery of older blind services is executed appropriately and in the best interest of the consumers of those services.

Rule II OLDER BLIND PROGRAM: ELIGIBILITY

This proposed rule provides the eligibility criteria that govern the acceptance of persons by the department into the Older Blind Program. The criteria are in accordance with the predicate definition of "older individual who is blind" stated in 29 USC 796j of the authorizing federal statutory scheme. The proposed rule provides that the receipt of services by persons who are determined eligible is discretionary. Furthermore, the proposed rule provides that the department, as provided for in Rule III and as necessary, may determine eligibility and limit the provision of services for eligible persons based upon the availability of fiscal and programmatic resources.

No other options have been considered for the program since the eligibility criteria cannot vary from the essential requirements of the authorizing federal statutory scheme if the state is to maintain the commitment of federal monies dedicated to the program.

Departmental discretion is necessary with respect to the acceptance of eligible persons into the program and to removal from the program. This is necessary so as to maintain the fiscal and programmatic integrity of the program. The department determined that without this discretion the state would in effect have to accept all

potentially eligible persons resulting in this limited program operating as if it were an entitlement program with unlimited enrollment, over expenditures, and programmatic stresses.

Rule III OLDER BLIND PROGRAM: REDUCTION OF SERVICE POPULATION

This proposed rule provides a process and criteria by which to limit the number of consumers participating in the program as may be necessary to respond to fiscal and programmatic limitations. This process is necessary to assure the continued integrity of the program through a systematic rationing of the services that the state can make available based upon fiscal and program resources. Absence of this process and criteria is not a viable option since there would be no way to curtail over expenditures or address programmatic stresses. The approach of seeking the adoption of a process to incrementally eliminate eligibility for existing or potential consumers based upon need as determined by the extent of disabling condition was chosen, as opposed to program closure or service reductions across the entire service population, because it focuses the available resources on those persons identified as having the most significant service needs.

The four categories by which the rationing is to be accomplished reflect a gradation from those with the most significant disabilities in relation to sight and the most need for services to those with lesser disabilities and need. This choice as to criteria for the categories is the most appropriate rather than a system of first in last out that would forego considerations of need for services.

Rule IV OLDER BLIND PROGRAM: SCOPE OF SERVICES

This proposed rule delineates the type of services that may be provided to a consumer or group of consumers through the Older Blind Program, states that selection of necessary services is at the discretion of the department, and that services are to be delivered through an independent living plan (ILP).

This rule is necessary to implement the services of the program and provide the planning vehicle through which those services may be individually selected and monitored for a consumer. The slate of services that may be delivered is necessary so as to provide an appropriate spectrum of services that can address the various needs for enhancing the independent living of persons who are blind or have vision impairments. The implementation also assures that the services delivered are appropriate in accordance with the direction of the governing federal authority at 29 USC 796k specifying the principal independent living services. This spectrum assures flexibility in designing and implementing a program of individualized services. Options of providing smaller limited sets of services are not considered viable given the various individual needs exhibited by consumers.

A planning process, as proposed, is as well a necessary adjunct to the individualized delivery of services with appropriate departmental oversight to assure the selection and delivery of appropriate services with adequate cost controls. The option of

foregoing these features would be untenable since any number of inappropriate services could be conjured up and delivered without serving the consumer's best interests and the department would be without programmatic and fiscal controls over individual expenditures.

Rule V CONSUMER GRIEVANCES AND FAIR HEARINGS

This rule provides an informal recourse through which grievances may be resolved and a formal recourse of a fair hearing process conducted in accordance with the Montana Administrative Procedure Act (MAPA). The provision of an informal grievance process is necessary to allow for the opportunity for the consumer and the department to explore in a nonconfrontive and straightforward manner resolution of a consumer status or service issue. The provision of a fair hearing process is necessary to assure consumers that for issues that remain unresolved after the informal grievance process there is available recourse to a formal adjudication due process in an appropriate forum.

5. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on September 21, 2006. Data, views, or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

6. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct the hearing.

/s/ Cary B. Lund
Rule Reviewer

/s/ Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State August 14, 2006.